

APPEAL NO. 032214
FILED SEPTEMBER 24, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 3 and was continued until July 29, 2003. The hearing officer determined that the respondent/cross-appellant (claimant) did not sustain damage or harm to the physical structure of her body in the form of a repetitive trauma injury while in the course and scope of employment on _____; that the appellant/cross respondent (self-insured) waived the right to contest compensability of the claimant's cervical injury; that because the carrier waived the right to contest compensability, the claimant sustained a compensable injury on _____, as a matter of law; and that the claimant had disability from January 29, 2002, through the date of the CCH. The self-insured appeals those determinations except for the determination that the claimant was not injured in the course and scope of employment. The claimant appeals the hearing officer's course and scope determinations and responds, urging affirmance of the waiver and disability determinations. The self-insured responds to the claimant's appeal urging affirmance.

DECISION

Affirmed.

CARRIER WAIVER

The hearing officer did not err in determining that the self-insured waived the right to dispute compensability of the claimed injury. Section 409.021(a) provides, in pertinent part, that an insurance carrier shall, not later than the seventh day after the receipt of written notice of an injury, begin the payment of benefits as required by the 1989 Act or notify the Texas Workers' Compensation Commission and the employee in writing if its refusal to pay benefits. It is undisputed that the self-insured first contested the claimed injury more than seven days after receiving written notice of the injury. The self-insured contends, however, that it did not waive its right to dispute the claimed injury, under Section 409.021, because the self-insured continued to pay the claimant and therefore no benefits were immediately due and owing to the claimant. The self-insured cites Texas Workers' Compensation Commission Appeal No. 023010-s, decided January 9, 2003, and argues that it is in the same position as the carrier in that case. We have had occasion to review and write on several cases since Appeal No. 023010-s. In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, citing Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), we interpreted this "pay or dispute" requirement, and commented on the ways a carrier can comply with Downs. Also in Appeal No. 030380-s, we noted the emphasis that the carrier (or self-insured in this case) must take some action to pay or dispute within seven days and we "hereafter decline to follow Appeal No. 023010-s." Accordingly, we decline to reverse the hearing officer's waiver determination.

DISABILITY AND COURSE AND SCOPE OF EMPLOYMENT

The other issues before the hearing officer regarded whether the claimant sustained an injury in the course and scope of her employment on _____, and whether she has disability. Conflicting evidence was presented on those issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines that facts have been established from the evidence presented. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge